

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.445, 150.450(2), (3), 150.990, 217.015(20)

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(3), 50 C.F.R. 17

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish seasons for the taking of fish and wildlife, to regulate bag limits, creel limits, and methods of take, and to make these requirements apply to a limited area. KRS 150.175(3) authorizes the department to establish a commercial fishing license that allows the taking and selling of rough fish. 50 C.F.R. Part 17 protects the shovel-nose sturgeon from harvest because of similarity of appearance with the endangered pallid sturgeon. This administrative regulation establishes commercial fishing requirements, protects certain species from overharvest, and regulates the buying and selling of roe-bearing species of rough fish.

Section 1. Definitions. (1) "Buyer's permit" means a Commercial Roe-bearing Fish Buyer's Permit.

(2) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(3) "Harvester permit" means a Commercial Roe-bearing Fish Harvester's Permit.

(4) "Immediate family member" means a person's spouse, mother, father, daughter, brother, sister, grandparent, or son.

(5) "Ohio River Trophy Catfish Harvest Permit" means a permit that allows a commercial fisherman to participate in a special catfish harvest program downstream of Cannelton Lock and Dam in the Ohio River and its tributaries open to commercial fishing.

(6) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(7) "Roe-bearing fish" means paddlefish, shovelnose sturgeon, and bowfin, regardless of the sex of the fish or the presence or absence of roe.

(8) "Roe-bearing Fish Buyer's Permit" means a permit issued by the department that entitles the permittee to buy roe-bearing species or roe in accordance with this administrative regulation.

(9) "Roe-bearing Fish Harvester's Permit" means a permit issued by the department to a licensed commercial fisherman that entitles the permit holder to harvest and sell roe-bearing species in accordance with this administrative regulation.

(10) "Sport fish" means those species established in 301 KAR 1:060.

(11) "Trophy catfish" means a:

(a) Blue or flathead catfish that is a minimum of forty (40) inches in length; or

(b) Channel catfish that is a minimum of thirty (30) inches in length.

(12) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

(13) "Unprocessed roe" means roe that has been removed from a roe-bearing fish by a foodprocessing plant prior to its sale at a roe-bearing fish buyer's facility.

Section 2. Nonresident Commercial Fishing Licenses. A nonresident commercial fishing license shall only be issued to residents of states that offer nonresident fishing licenses to Kentucky residents, except that a nonresident with a valid 2013 Kentucky nonresident commercial fishing license shall be eligible to purchase a nonresident fishing license in subsequent license years, unless the nonresident fails to purchase the permit during any license year.

Section 3. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than two (2) unlicensed helpers while actively fishing.

(2) A commercial fisherman shall ensure that an unlicensed helper complies with all boating safety requirements established in KRS Chapter 235.

(3) An unlicensed helper shall:

(a) Be accompanied by a licensed commercial fisherman while using commercial fishing gear; and

(b) Be permitted to transport roe or roe-bearing fish in the absence of a commercial fisherman with a Fish Transportation Permit as established in 301 KAR 1:125.

(4) A commercial fisherman whose commercial fishing license has been suspended or revoked in Kentucky or in another state shall not:

(a) Be listed as a helper by a licensed Kentucky commercial fisherman; or

(b) Assist a licensed Kentucky commercial fisherman in harvesting or transporting fish.

Section 4. Tagging and Using Commercial Gear. A commercial fisherman shall:

(1) Tag commercial fishing gear pursuant to 301 KAR 1:146;

(2) Not use commercial fishing gear within:

(a)1. Fifty (50) yards of the outlet or inlet of an overflow lake; or

2. Fifty (50) yards of the mouth of a stream, except the mouth of the Ohio River; and

(b) 200 yards of a dam, as established in KRS 150.445;

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; or

(b) Within a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes; and

(4) Call the department at 800-858-1549 within twenty-four (24) hours if any commercial gear is:

(a) Lost;

(b) Stolen; or

(c) Irrecoverable due to unforeseen circumstances.

Section 5. Special Catfish Harvest Restrictions. (1) In the Ohio River and its tributaries open to commercial fishing, there shall be:

(a) An unlimited harvest of:

1. Blue and flathead catfish that are less than thirty-five (35) inches in length; and

2. Channel catfish that are less than twenty-eight (28) inches in length; and

(b) A daily limit of one (1):

1. Blue and flathead catfish greater than or equal to thirty-five (35) inches in length; and

2. Channel catfish greater than or equal to twenty-eight (28) inches in length.

(2) A person with a valid commercial license shall obtain from the department a free Ohio River Trophy Catfish Harvest Permit in order to harvest multiple trophy catfish downstream of Cannelton Lock and Dam.

(a) The department shall issue a maximum of fifty (50) permits annually.

(b) Beginning in 2015, the department shall issue a permit to a commercial fisherman who:

1. Has reported a minimum harvest of 10,000 pounds of catfish from the Ohio River and its tributaries open to commercial fishing in at least two (2) of the last three (3) years; and

2. Sends a written request to the department postmarked on or before March 10.

(c) There shall be an unlimited daily harvest of catfish less than trophy size for each permit holder.

(d) There shall be a daily harvest limit of four (4) trophy catfish in aggregate for each permit holder.

(e) Beginning in 2015, if fifty (50) permits are not issued by March 15, then the department shall conduct a random electronic lottery drawing for the remaining slots.

(f) A commercial fisherman shall apply for the lottery established in paragraph (e) of this subsection by sending a written request to the department to be entered in the lottery postmarked on or before March 10.

(g) If the number of applicants for any lottery is less than the number of available permits, then the remaining permits shall be distributed on a first-come, first-served basis.

Section 6. Harvester Permit. (1) In order to retain his or her permit privilege, a harvester permit holder shall submit to the department postmarked by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The permit fee as established in 301 KAR 3:022.

(2) Prior to being issued a harvester permit, a person shall possess a valid commercial fishing license.

(3) A harvester permit shall not be sold to a resident of a state that will not sell a nonresident harvester permit, or its equivalent, to Kentucky residents.

(4) The maximum number of resident harvester permits available each year shall be 101.

(5) The maximum number of nonresident harvester permits available each year shall be eighteen (18).

(6) A harvester permit holder shall be eligible to transfer permit privileges to:

(a) An immediate family member; or

(b) An unlicensed helper who:

1. Has been employed by the permit holder for a period of at least one (1) year in that capacity; and

2. Complies with the requirements of this administrative regulation.

(7) To transfer a permit, the permit holder shall send to the department:

(a) A notarized letter documenting the name and relationship of the permit recipient; and

(b) If an unlicensed helper, proof of employment of the unlicensed helper for a period of one (1) year.

(8) Transferability shall be voided if a commercial fishing license or harvester permit is revoked or suspended as established in Section 14 of this administrative regulation.

Section 7. Harvester Permit Lottery. (1) There shall be a lottery for the unfilled harvester permits below the quota.

(2) A person shall apply for the lottery by submitting the following to the department by September 15:

(a) A completed Application for Commercial Roe-bearing Fish Harvester's Permit; and

(b) The appropriate permit fee as established in 301 KAR 3:022.

(3) A mailed Application for Commercial Roe-bearing Fish Harvester's Permit shall be postmarked by September 15 to be eligible.

(4) A person chosen in the lottery shall first obtain a commercial fishing license prior to obtaining a harvester permit.

(5) The department shall return all permit fees to those not chosen in the lottery.

(6) If the department receives fewer resident or nonresident Applications for Commercial Roe-bearing Fish Harvester's Permits than the number of available harvester permits, then completed Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 shall be issued in the order they were received until the quota has been

reached.

(7) If the number of Applications for Commercial Roe-bearing Fish Harvester's Permits received after September 15 exceeds the number of harvester permits available, then a second lottery shall be held to determine the recipients of the available permits.

Section 8. Harvester Permit Requirements. (1) A harvester permit shall be required for a licensed commercial fisherman to harvest, transport, or sell roe fish or unprocessed roe.

(2) A permit shall not be required for a special commercial fishing permit holder to harvest and sell roe-bearing fish flesh or unprocessed roe from Kentucky and Barkley lakes during the special commercial fishing season, as established in 301 KAR 1:140.

(3) A harvester permit shall not be issued unless all applicable reports have been completed and submitted to the department, pursuant to Section 14 of this administrative regulation.

(4) A harvester permit holder shall:

(a) Have the permit in possession while:

1. Fishing for roe-bearing fish; and
2. Transporting or selling roe-bearing fish or unprocessed roe;

(b) Only sell, ship, barter, or provide harvested roe from roe-bearing fish to a Kentucky permitted buyer as established in Section 9 of this administrative regulation; and

(c) Possess a valid bill of lading if transporting unprocessed roe to a Kentucky permitted buyer.

Section 9. Buyer's Permit Requirements. (1) A buyer's permit shall be required to buy, sell, barter, receive, or ship unprocessed roe from roe-bearing fish harvested in Kentucky.

(2) A person shall apply for a buyer's permit by submitting a completed Application for Commercial Roe-bearing Fish Buyer's Permit along with the appropriate permit fee to the department, as established in 301 KAR 3:022.

(3) A buyer's permit holder shall:

(a) Not knowingly purchase illegally taken fish or unprocessed roe from any state;

(b) Have in possession a valid buyer's permit while purchasing, receiving, or transporting unprocessed roe;

(c) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in Kentucky;

(d) Maintain for a period of three (3) years an accurate record of all unprocessed roe purchased from roe-bearing fish harvesters in another state including:

1. Name, address, and telephone number of the seller;
2. License number of the seller; and
3. Number of pounds of unprocessed roe purchased;

(e) Sign the harvester permit holder's Daily Roe-bearing Fish Harvester's Transaction Report for each transaction prior to purchasing or receiving unprocessed roe from the harvester;

(f) Retain a copy of the Daily Roe-bearing Fish Harvester's Transaction Report for each transaction with a harvester permit holder for a period of three (3) years; and

(g) Allow a conservation officer access to all records and reports, as established in this section, upon request, during normal business hours.

Section 10. Commercial Fishing Season and Size Limits. (1) The commercial fishing season shall be open year-round in the waters listed in 301 KAR 1:150, except for:

(a) Kentucky and Barkley lakes as established in 301 KAR 1:140;

(b) The shovelnose sturgeon season, which shall extend from October 15 through May 15 in the Ohio River Basin only; and

(c) The paddlefish season, which shall extend from:

1. November 1 through April 30 in all waters open to commercial fishing, except Barkley and Kentucky Lakes, as established in 301 KAR 1:140; and
2. November 1 through May 31 for commercial trotlines in all waters open to commercial fishing, except the Ohio and Mississippi Rivers.

(2) There shall not be a size limit on any commercially-harvested rough fish, except that a commercial fisherman shall only harvest:

(a) Shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from the tip of the snout to the fork of the tail fin;

(b) Paddlefish that are thirty-two (32) inches or greater, as measured from the beginning of the eye to the fork of the tail fin, except in Kentucky and Barkley lakes as established in 301 KAR 1:140; and

(c) Blue catfish, flathead catfish, and channel catfish as established in Section 5 of this administrative regulation, and measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(3) A harvester or buyer permit holder shall not possess:

(a) Unprocessed paddlefish roe after June 5; or

(b) Unprocessed shovelnose sturgeon roe after May 20.

Section 11. Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not harvest, and shall immediately release the following species:

(a) Sport fish listed in 301 KAR 1:060;

(b) Pallid sturgeon, a federally endangered species;

(c) Lake sturgeon;

(d) Shovelnose sturgeon caught in the Mississippi River;

(e) All turtle species;

(f) All mussel species except Asiatic clams (Genus Corbicula); and

(g) Alligator gar.

(2) A licensed commercial fisherman shall only sell roe-bearing fish or unprocessed roe from roe-bearing fish harvested by commercial fishing methods established in and permitted by 301 KAR 1:146.

Section 12. Tending Gear and Removing Fish. A commercial fisherman shall:

(1) Tend and remove the fish from:

(a) Hoop nets or slat traps at least once every seventy-two (72) hours; and

(b) Other commercial fishing gear at least once every twenty-four (24) hours;

(2) Not possess eggs of any species of fish outside of the fish's body cavity while on the water or adjacent bank; and

(3) Remove commercial fishing gear from the water when finished fishing.

Section 13. Roe Fish Egg Checking Methodology. A commercial fisherman shall use a ten (10) gauge or smaller needle to examine roe fish for the presence of eggs.

Section 14. Reporting, License and Permit Suspension, Renewal, and Revocation. (1) Every licensed commercial fisherman shall submit a completed Monthly Report of Commercial Fish Harvest in Kentucky by the tenth day of every month for the previous month's harvest, even if no harvest occurred.

(2) A harvester permit holder shall:

(a) Complete a Daily Roe-bearing Fish Harvester's Transaction Report for each day of the

month that roe-bearing fish are harvested or sold to a Kentucky permitted buyer; and

(b) Submit to the department all completed daily reports within a calendar month by the tenth day of the following month, in addition to the reporting requirements established in subsection (1) of this section.

(3) If a buyer's permit holder completes any transactions in a given month, the permit holder shall submit to the department a completed Monthly Commercial Roe-bearing Fish Buyer's Report by the tenth day of the following month.

(4) A report that is being mailed to the department shall be postmarked on or before the tenth of the month pursuant to subsections (1) through (3) of this section.

(5) The department shall issue a courtesy reminder letter to a holder of a commercial fishing license, harvester permit, or buyer's permit who has failed to submit to the department a monthly report by the deadlines established in subsections (1) through (4) of this section.

(6) The department shall issue a warning letter to a license or permit holder who has twice failed to meet the reporting deadlines established in subsections (1) through (4) of this section during any given commercial fishing license year.

(7) The department shall suspend the commercial fishing license of a license or permit holder who has failed to meet reporting deadlines for three (3) or more months in a given license year until the license or permit holder submits to the department all required reports.

(8) The department shall suspend for a period of three (3) months the commercial fishing license of a license holder who has not met the reporting deadlines established in this section for four (4) or more times in a license year.

(9) If a three (3) month suspension extends into a new license year, subsequent delinquent reports shall result in additional three (3) month suspensions.

(10) The department shall not renew a commercial fishing license, harvester permit, or buyer's permit for a person who has not satisfied the reporting requirements of this administrative regulation.

(11) The department shall revoke the commercial fishing license, for a period of two (2) years, of a person who has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial fishing gear, pursuant to 301 KAR 1:146;

(b) Knowingly placing commercial fishing gear in a restricted area, pursuant to Section 4(2) and (3) of this administrative regulation;

(c) Harvesting prohibited species of fish;

(d) Commercially fishing in waters not open to commercial fishing, pursuant to 301 KAR 1:150; or

(e) Knowingly falsifying commercial harvest data.

(12) The department shall revoke a buyer's permit, for a period of two (2) years, of a person:

(a) Convicted of a federal commercial fishing violation; or

(b) Who falsified data on a Monthly Commercial Roe-bearing Fish Buyer's Report.

(13) A person may request an administrative hearing pursuant to KRS Chapter 13B if a permit has been:

(a) Denied;

(b) Suspended;

(c) Not renewed; or

(d) Revoked.

Section 15. Boundaries. The department shall make available on its Web site at fw.ky.gov the Global Positioning System coordinates detailing the Kentucky and Ohio border on the Ohio River, for download to personal devices.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Commercial Roe-bearing Fish Harvester's Permit", 2008;
- (b) "Application for Commercial Roe-bearing Fish Buyer's Permit", 2008;
- (c) "Daily Roe-bearing Fish Harvester's Transaction Report", 2008;
- (d) "Monthly Commercial Roe-Bearing Fish Buyer's Report", 2008;
- (e) "Monthly Report of Commercial Fish Harvest in Kentucky", 2014; and
- (f) "List of GPS coordinates for Ohio River Boundary with Ohio", 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (KFWR-F-CF3-2; 1 Ky.R. 243; eff. 1-8-1975; Am. 5 Ky.R. 1078; eff. 8-1-1979; 21 Ky.R. 490; eff. 9-28-1994; 25 Ky.R. 410; 834; eff. 10-16-1998; 29 Ky.R. 1314; 1765; eff. 1-16-2003; 32 Ky.R. 942; eff. 2-3-2006; 34 Ky.R. 367; 850; 1395; eff. 12-12-2007; 34 Ky.R. 2217; Am. 2552; 35 Ky.R. 550; eff. 9-12-2008; 37 Ky.R. 2056; 2430; 2565; eff. 6-3-2011; 39 Ky.R. 834; eff. 1-4-2013; 40 Ky.R. 1874; 2424; eff. 6-6-2014; 44 Ky.R. 570; eff. 12-7-2017.)